



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 224

[Docket No. 210817-0163]

RTID 0648-XR117

Endangered and Threatened Wildlife and Plants; Technical Corrections for the Bryde's Whale (Gulf of Mexico Subspecies)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Direct final rule.

SUMMARY: We, the NMFS, announce the revised taxonomy and common name of *Balaenoptera edeni* (*unnamed subspecies*; Bryde's Whale – Gulf of Mexico subspecies) under the Endangered Species Act of 1973, as amended (ESA). We are revising the Enumeration of endangered marine and anadromous species for Bryde's Whale – Gulf of Mexico subspecies, to reflect the scientifically accepted taxonomy and nomenclature of this species. We revise the common name to Rice's whale, the scientific name to *Balaenoptera ricei*, and the description of the listed entity to entire species. The changes to the taxonomic classification and nomenclature do not affect the species' listing status under the ESA or any protections and requirements arising from its listing.

DATES: This rule is effective [*INSERT date 60 days after date of publication in the **FEDERAL REGISTER***] without further action, unless significant adverse comment is received by [*INSERT date 30 days after date of publication in the **FEDERAL REGISTER***]. If significant adverse comments are received, the NMFS will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, information, or data on this document, identified by NOAA-NMFS-2021-0078, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2021-0078 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Marine Mammal Branch Chief, Protected Resources Division, Southeast Regional Office, NMFS Protected Resources Division, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by us. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous), although submitting comments anonymously will prevent us from contacting you if we have difficulty retrieving your submission. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Barb Zoodsma, NMFS, Southeast Regional Office, (727) 824-5312; or Lisa Manning, NMFS, Office of Protected Resources (301) 427-8466.

SUPPLEMENTARY INFORMATION:

Purpose of This Rule

The purpose of this direct final rule is to notify the public that we are revising the Enumeration of endangered marine and anadromous species (50 CFR 224.101(h)) to reflect the scientifically accepted taxonomy and nomenclature of one mammal species listed under section 4

of the ESA (16 U.S.C. 1531 *et seq.*), the mammal currently enumerated as Bryde's whale (Gulf of Mexico subspecies). The changes reflect the most recently accepted scientific name in accordance with 50 CFR 224.101(e).

We are publishing this rule as a direct final rule because this is a noncontroversial action that reflects decisions already taken in the scientific community, such that prior notice and an opportunity to comment is unnecessary. This rule does not change the listing status of the species under the ESA and does not alter any protections afforded the species or any other legal requirements arising from the species' listing under the ESA. This change should be undertaken in as timely a manner as possible. This rule will be effective, as published in this document on the effective date specified in DATES, unless we receive significant adverse comments on or before the comment due date specified in DATES. Significant adverse comments are comments that provide strong scientific justification as to why the taxonomic and nomenclature changes to the enumeration of the listed entity should not be adopted or why the rule should be changed. Please include sufficient scientific information with your comments that will allow us to verify the basis for any significant adverse comments.

If we receive significant adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date, and we will engage in notice and comment rulemaking under the applicable requirements of the Administrative Procedure Act to promulgate these changes to 50 CFR 224.101(h).

Background

Under 50 CFR 224.101(e), we use the most recently accepted scientific name of any species that we have determined to be endangered or threatened under the ESA. The ESA likewise requires that listing decisions be based solely on the best scientific and commercial data available. 16 U.S.C. 1533(b)(1)(A). Using the best available scientific information, our direct final rule documents a change to the taxonomy and nomenclature of the Bryde's whale (Gulf of Mexico subspecies). These changes are supported by a study published in a peer-reviewed

journal and independent acceptance by the Society for Marine Mammalogy Committee on Taxonomy. We revise the common name, scientific name, and description of the species listed under section 4 of the ESA (16 U.S.C. 1531 *et seq.*) as follows: common name is Rice's whale, scientific name is *Balaenoptera ricei*, and description of the listed entity is the entire species. We make these changes to the Enumeration of endangered marine and anadromous species (50 CFR 224.101(h)) to reflect the most recently accepted scientific name in accordance with 50 CFR 224.101(e).

Taxonomy Classification

Balaenoptera ricei

The scientific name change to *Balaenoptera ricei* (Rice's whale) from *Balaenoptera edeni* is supported by genetic and morphological evidence (Rosel *et al.*, 2021), which indicate that the Bryde's whale (Gulf of Mexico subspecies; referred to as Bryde's-like whales by Rosel *et al.*, 2021) are a previously unnamed species. Rosel *et al.* (2021) used molecular data from Bryde's-like whales in the Gulf of Mexico to better describe the relationship of this species to other whales in the genus *Balaenoptera*. Phylogenetic analysis identifies Bryde's-like whales from the Gulf of Mexico as a unique lineage separated from Bryde's whales (including subspecies thereof that are recognized by some researchers) and from the sei whale and Omura's whale (Rosel *et al.*, 2021). Following a stranding of an individual in 2019, Rosel *et al.* (2021) performed the first morphological examination of an intact specimen of Bryde's-like whale from the Gulf of Mexico. This morphological analysis revealed distinctions in bone form and structure between Bryde's-like whales from the Gulf of Mexico and other whales in the genus *Balaenoptera*. The morphological distinctions and degree of genetic divergence described are equivalent to or greater than levels of molecular and morphological divergence between other, sister *Balaenoptera* genera, and support divergence at the species level (Rosel *et al.*, 2021). A workshop on the taxonomy of cetaceans concluded that a single line of evidence (*e.g.*, genetic data or morphological data) was sufficient to delimit cetacean subspecies while two independent

lines of evidence were necessary for delimiting species (Reeves *et al.*, 2004). Rosel *et al.* (2021) presented multiple lines of evidence (genetic data and morphological data) that indicate that the Bryde's-like whales in the Gulf of Mexico are a previously unnamed species. The Society for Marine Mammalogy's Taxonomy Committee evaluated the Rosel *et al.* (2021) paper and agreed with the findings. As a result, the Committee now recognizes the Bryde's whales in the Gulf of Mexico as a different species, Rice's whale, *Balaenoptera ricei*. The taxonomic change for Rice's whale is catalogued in ZooBank, the official register for the International Commission on Zoological Nomenclature, and has been added to the official list of marine mammal species and subspecies maintained by the Society for Marine Mammalogy.

NMFS recognizes the taxonomic change and therefore is making technical revisions to 50 CFR 224.101(h) to reflect the best available scientific information about the listed species. Once the changes to 50 CFR 224.101(h) take effect, the taxonomic and nomenclature changes will be incorporated into all new NMFS publications pertaining to the species. This species will continue to be listed as endangered and is subject to the same protections as existed prior to these changes. No other aspect of the entry for this species in 50 CFR 224.101(h) will change as a result of this rule.

Required Determinations

The Assistant Administrator for Fisheries finds that good cause exists to waive the requirement for prior notice and opportunity for public comment, pursuant to 5 U.S.C. 553(b)(B). Such procedures would be unnecessary as the taxonomic change made in this rule are technical and reflect decisions already taken in the scientific community. This rule does not change the listing status of the Rice's whale under the ESA, and therefore does not alter the legal protections afforded to the species or any other requirements arising from its listing under the ESA, or add any new requirements.

This action is not subject to review under Executive Order 12866. Because a general notice of proposed rulemaking is not required, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.*, are inapplicable.

This final rule does not contain policies with federalism implications under Executive Order (E.O.) 13132. Policies that have federalism implications refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications; therefore, the agency did not follow the additional consultation procedures outlined in E.O. 13132.

This rule does not contain any collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

E.O. 12898 requires that Federal actions address environmental justice in the decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. This rule is not expected to have a disproportionate effect on minority populations or low-income populations.

This final rule makes taxonomic changes relative to a previous listing determination under the ESA to reflect the best available scientific information about the species' taxonomy and nomenclature. NMFS has concluded that National Environmental Policy Act (NEPA) does not apply to ESA listing actions, and we conclude that NEPA does not apply to this correction to the description and identification of the listed species to reflect the best available scientific information. (See NOAA Administrative Order 216-6A and the Companion Manual for NOAA Administrative Order 216-6A, regarding Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities).

References Cited

Rosel, P.E., Wilcox, L.A., Yamada, T.K., Mullin, K.D. (2021). A new species of baleen whale (*Balaenoptera*) from the Gulf of Mexico, with a review of its geographic distribution. *Marine Mammal Science*, 1-34.

List of Subjects in 50 CFR Part 224

Endangered and threatened species, Exports, Imports, Reporting and Recordkeeping requirements, Transportation.

Dated: August 18, 2021.

Kelly Denit,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, we amend part 224, subchapter C of chapter II, title 50 of the Code of Federal Regulations, as set forth below:

PART 224 –ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531-1543 and 16 U.S.C. 1361 *et seq.*

2. In § 224.101, in paragraph (h), under “Marine Mammals,” remove the entry for “Whale, Bryde’s (Gulf of Mexico subspecies)” and add an entry for “Whale, Rice’s” in alphabetical order.

The addition reads as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

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Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals					

Whale, Rice’s	Balaenoptera ricei	Entire Species	84 FR 15446, April 15, 2019	NA	NA

¹Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

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